IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.4960 of 1990

Smt.Sushila Jotiram Janawade .. Petitioner
vs
Shamrao Baburao Raut ... Respondent
..
Mr.M.R.Suryavanshi for Petitioner
Mr.V.B.Rajure for Respondent

CORAM : D.G.KARNIK, J
DATE : 17TH JUNE, 2004.

P.C.

1. By this petition, the petitioner tenant takes exception to the judgment and decree dated 20th April, 1990 for possession passed by the learned IIIrd Additional District and Sessions Judge, Kolhapur allowing Civil Appeal No. 402 of 1985 reversing the judgment of the Civil Judge, Junior Division, Kolhapur in Regular Civil Suit No. 748 of 1981.

2. The respondent is the owner and landlord of the property bearing C.T.S. No.2614 B Ward, Kolhapur. Initially, the petitioner was in occupation of three residential rooms on the ground floor of the aforesaid suit property. It is common case between the parties one out of the three rooms in possession of the petitioner was acquired by the Kolhapur Municipal Corporation for the purpose of road widening and the petitioner remained in possession only of two rooms since November, 1979. According to the respondent, the petitioner was in arrears of rent from May 1979 up to February 1981 and therefore by a notice dated 27th March, 1981 the respondent demanded arrears of rent. and education cess amounting to Rs. 153/- for three years. As the petitioner did not make the payment of arrears of rent and education cess within one month, the respondent filed a suit bearing Regular Civil Suit No. 748 of 1981 in the court of the Civil Judge, Junior Division, Kolhapur for possession as well as for recovery of arrears of rent and education cess. By an order dated 20th September, 1985 the Civil Judge passed a money decree to the extent of Rs.1320/- but dismissed the suit for possession. By the impugned judgment and order dated 20th April, 1990 the IIIrd Additional District Judge allowed the appeal of the landlord and passed a money for Rs.1893/- and also a decree for possession.

3. There is a dispute between the parties as to what was the initial rent in respect of the three rooms - whether it was Rs.120/- or Rs.110/- per month. There is a dispute between the parties whether the said rent was inclusive or exclusive of the education cess. There is also a dispute between the parties regarding the reduction in the quantum of rent on account of the acquisition of the part of the rented premises by the Kolhapur Municipal Corporation.

It is not disputed that within one month of the receipt of the notice of demand, the petitioner tenant filed an application bearing Misc. Application No. 83 of 1981 for fixation of standard rent. It was in these circumstances that the trial court held, and in my opinion rightly, that there was a bonafide dispute between the parties regarding the standard rent and the petitioner was not a defaulter in payment of rent. The appellate court also held that there was a bonafide dispute between the parties regarding the standard rent on that count and declined to pass a decree on the ground of non payment of rent within one month of the receipt of the notice. In paragraph 18 of the judgment of the appellate court, it observed:

" Hence, taking into consideration the cumulative effect of the evidence as brought on record in the instant matter, it has to be said that the original plaintiff/the appellant is not entitled for any decree on the ground of default of the original defendant/the respondent in payment of arrears of rent for more than 6 months. Hence, on this count I am not inclined to decree the said suit of the original plaintiff/the appellant. "

3. The appellate court however held that the original rent of 3 rooms as well as the agreed rent of 2 rooms remaining after acquisition was exclusive of education cess and as the petitioner had not deposited the education cess in the court, he was a defaulter.

4. In the standard rent application filed by the petitioner, the court had fixed the interim rent at Rs.60/-. The order of interim rent does not disclose whether the petitioner tenant was required to pay education cess in addition to Rs.60/-. In the absence of any specific direction by the court stating that the interim rent was exclusive of education cess, the petitioner was entitled to proceed on the assumption that he was required to deposit the rent at Rs.60/- in court. In any event, the

benefit of doubt must go to the petitioner-tenant. Learned counsel for the petitioner handed in a statement showing the amount deposited by the petitioner -tenant in court. A perusal of the statement shows that the petitioner has deposited the rent regularly month to month of Rs.60/- in the court. Learned counsel for the respondent was unable to point out a single default or delay in deposit of the rent from the said statement. Thus, the petitioner -tenant has complied with the order of payment of interim rent. In view of the fact that the case was covered under section 12 (3) (b) of the Bombay Rent Act and the petitioner had scrupulously complied with the order of interim rent as determined by the court, the appellate court erred in law in passing a decree for possession on the ground that the petitioner had not deposited the permitted increases in the court.

5. In the circumstances, petition is allowed. The impugned judgment is set aisde. The respondent's suit for possession is dismissed. In the facts and circumstances of the case, parties shall bear their costs throughout.

D.G.KARNIK, J